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U.S. Citizenship
and Immigration
Services

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JAN 28 2005

FILE: SRC 03 192 50547 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a supermarket and seeks to employ the beneficiary as a management analyst and sales manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst and sales manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence the beneficiary would: analyze business and operating procedures to improve organization, communications, information flow, integrated production methods, inventory control, and cost analysis; gather and organize information on problems or procedures including present operating procedures for improvement; confer with personnel to assure smooth functioning of newly implemented systems or procedures; manage the sales activities of the supermarket personnel to assure that the transition or implementation of new procedures are accomplished as expected; prepare balance sheets, and profit and loss statements; prepare payroll and other reports to summarize current and projected company financial position detailing, assets, liabilities, and capital; and prepare all tax related matters such as quarterly reports, federal, and state tax declarations when applicable. The petitioner requires a minimum of a bachelor's degree of Business Administration in Accounting for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to contain some responsibilities normally performed by management analysts, as determined by the director. Those responsibilities, however, are set forth in vague and generic terms. It is not possible to determine from the duties described precisely what tasks the beneficiary would perform in: analyzing business and operating procedures to improve

organization, communications, information flow, integrated production methods, inventory control, or cost analysis; and gathering and organizing information on problems or procedures including present operating procedures for improvement. Based upon the duty description provided, it cannot be determined that these duties are truly those of a management analyst as described in the *Handbook*. It should further be noted that management analysts are generally employed as consultants, not as full time employees in the industry.

Taken as a whole, the duties of the proffered position are essentially those noted for general and operations managers who plan, direct, or coordinate the operations of companies or public and private sector organizations. These managers formulate policies, manage daily operations, and plan the use of materials and human resources. In addition to these managerial responsibilities the beneficiary would also perform bookkeeping tasks for the petitioner. The petitioner has not met any of the above requirements to qualify the offered position as a specialty occupation. The proffered position requires general managerial skills, and those skills do not arise from any particular specialty. Indeed, many management or top executive positions are filled by promoting experienced, lower level managers from within an organization. Other top executives/managers hold degrees in business administration or a liberal arts degree. A college degree in a specific specialty is not a minimum requirement for entry into the field of management. A degree in a wide range of disciplines will suffice for positions that do require a college education. It should further be noted that a baccalaureate level education is not required for performing the duties of a bookkeeper or financial clerk. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of this assertion submits copies of several job advertisements. Those advertisements, however, are of little evidentiary value because they are not for positions parallel to the proffered position. Nor are they from organizations similar to the petitioner. The petitioner has not, therefore, established its assertion and the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty, or its equivalent, for the proffered position, and offers no evidence in this regard. The regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has, therefore, not been established.

The petitioner has not established that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are those that would be routinely performed by a manager in the petitioner's industry, and are routinely performed both by individuals with less than a baccalaureate level education, and those who hold degrees in a wide range of educational disciplines. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be considered is whether the petitioner is qualified to perform the duties of the proffered position. It has been determined that the offered position does not qualify as a specialty occupation, thus, there would be no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. Suffice it to say that the petitioner deems the beneficiary qualified to perform the duties of the position based upon her past education, training, and experience. That

determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.